

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

Ellen Gordon, Executrix of the Estate of Philip S. Rader  
Ellen Gordon, as Mother and Next Friend of Isaac Rader,  
and Ellen Gordon, Individually

v.

Deborah Diane Day, M.D., MWV Healthcare Associates, Inc.,  
and the Memorial Hospital

Docket No. 00-C-0056

ORDER ON PLAINTIFFS' MOTION TO COMPEL PRODUCTION  
OF DOCUMENTS AND ANSWERS TO DEPOSITION QUESTIONS

The plaintiffs seek production of credentialing committee records regarding Dr. Day "to determine more precisely what the hospital had done to assure the competency of Dr. Day to perform stress tests before she was hired." See Plt. Motion at p. 5. The request is limited to documents produced before Dr. Day was hired.

In addition, the plaintiffs seek an order requiring the hospital's executive director to answer specific questions related to Dr. Day's qualifications to perform stress tests. The defendants object arguing that the documents and related questions are protected from disclosure pursuant to RSA 151:13-a. After a review of the pleadings, related case law and exhibits attached to each pleading, the court grants the plaintiffs' requests.

RSA 151:13-a states in pertinent part that:

Records of a hospital committee organized to evaluate matters relating to the care and treatment of patients or to reduce morbidity and mortality . . . shall be confidential and privileged and shall be protected from direct or indirect means of discovery . . . (Emphasis added.)

The Supreme Court has interpreted this privilege narrowly and with consideration of the legislation's purpose. In re: "K", 132 N.H. 4 (1989). See also Plummer v. Pilpil-Arambulo, No. 98-C-1010 (Order on the Plaintiff's Motion to Compel Production of Dr. Pilpil-Arambulo's Credentialing File, September 17, 1999). In In re: "K", the court determined that documents produced on behalf of a committee authorized to study infections present within the hospital as well as those that may have occurred in the past, were subject to the privilege. In re: "K", at 12. That is because the

function of the committee was to evaluate the quality or appropriateness of particular hospital practices that may affect the care and treatment of patients. Id. at 10. As such, the hospital engaged in "an essentially retrospective process based on the analysis of what has already been done, for the purposes of providing instruction and deriving standards to be applied in future cases," id. involving the possible transmission of infectious diseases within the hospital.

In contrast, the plaintiffs in this case seek to discover documents relating to the hospital's decision to hire Dr. Day. While Dr. Day's qualifications would ultimately bear on the quality of care the hospital provides, an internal evaluation of her background conducted before she was hired does not involve a retrospective analysis of hospital practices for the purposes of improving service in the future; which is precisely what the statute was designed to protect. Under the circumstances of this case, the credentialing committee does not operate as a quality assurance committee; that is, it does not actively "evaluate matters relating to the care and treatment of patients" with a view toward correcting physician or hospital error or in an effort to change hospital practices.

Furthermore, the court agrees that:  
unlike the work of a quality assurance committee, the work of a credentialing committee is not chilled by pre-trial discovery. The standards applied by the credentialing committee simply exist. . . . Applicants and committee personnel [and referring physicians] might be reluctant to reveal certain facts about themselves . . . [or about the applicant], but not because they fear that disclosure could lead to hospital liability.

Plummer at 2, 3.

Accordingly, the plaintiffs' motion is granted.

SO ORDERED.

Date: October 9, 2001

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Tina L. Nadeau  
Presiding Justice